

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION**

JESSICA JONES, et al.,

Plaintiffs,

v.

VARSITY BRANDS, LLC, et al.

Defendants.

Case No. 2:20-cv-02892-SHL-tmp

JURY DEMAND

**MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' UNOPPOSED MOTION
TO DROP PARTY UNDER FED. R. CIV. P. 21**

Plaintiffs Jessica Jones, Michelle Velotta, and Christina Lorenzen (“Plaintiffs”) respectfully submit this Memorandum of Law in support of Plaintiffs’ Unopposed Motion to Drop Party Under Fed. R. Civ. P. 21 (“Motion”) in the above-captioned action (the “*Jones Action*”).

I. INTRODUCTION

Fact discovery is coming to a close in this case. Plaintiff Michelle Velotta has ceased participating in discovery, and has ceased returning phone calls and email communications from her counsel for the purpose of counseling her, preparing her for her deposition, and otherwise enabling her to perform the role of a class representative as required by Fed. R. Civ. P. 23. Other Plaintiffs in this case will act as class representatives, and as a result there will be no prejudice or material difference in the litigation as a result of dropping Ms. Velotta as a party to this action. Ms. Velotta will be able to participate in whatever recovery may result – if any – as an absent class member. Defendants in this action do not oppose this Motion, and the parties have agreed that each party shall bear its own costs and fees in respect to the dismissal of Ms. Velotta as a putative class representative.

II. LEGAL STANDARDS

In the Sixth Circuit, the proper way to drop a party to a lawsuit, without dismissing the whole action, is by motion under Rule 21. *Philip Carey Mfg. Co. v. Taylor*, 286 F.2d 782, 785 (6th Cir. 1961); *United States ex rel. Doe v. Preferred Care, Inc.*, 326 F.R.D. 462, 464 (E.D. Ky. 2018) (“district courts in this circuit routinely apply *Taylor* when plaintiffs attempt to dismiss less than the entire controversy,” citing cases). The situation in the *Preferred Care* case is instructive. There, the plaintiffs and some defendants submitted a stipulation pursuant to Fed. R. Civ. P. 41 seeking to dismiss claims against some but not all defendants. 326 F.R.D. at 463. The court there

noted that Rule 41 was not the proper procedural mechanism, and converted the stipulation into a motion under Rule 21 and granted the motion. *See also Cosby v. KPMG, LLP*, 2020 WL 3529659, at *3 (E.D. Tenn. June 29, 2020) (allowing withdrawal of class representative under Rule 21 and noting that “[o]n motion or on its own, the court may at any time, on just terms, add or drop a party”); *id.* (quoting *Organization of Minority Vendors, Inc. v. Illinois Central-Gulf R.R.*, No. 79 C 1512, 1987 WL 8997, at *1 (N.D. Ill. Apr. 2 1987)) (finding that “[a]bsent a good reason ... a [named] plaintiff should not be compelled to litigate if it does not wish to”). Here, the parties agree to the relief. The proper procedural vehicle is being used and no prejudice will result to any present party or to Ms. Velotta. For the reasons set forth above, and the interests of judicial economy and efficiency consistent with Fed. R. Civ. P. 1, it is respectfully submitted that the Court should grant this joint motion.

Dated: April 5, 2022

Respectfully submitted,

By: /s/ Joseph R. Saveri
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CERTIFICATE OF SERVICE

I hereby certify that on April 5, 2022, I served a copy of the foregoing document via the Court's ECF system, effecting service on all interested parties.

/s/ Joseph R. Saveri
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